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PA/HO Department of State

E.O. 12958, as amended

July 12, 2005

DEPARTMENT OF STATE

THE LEGAL ADVISER

19718

~~CONFIDENTIAL~~

December 15, 1969

MEMORANDUM FOR J - AMBASSADOR JOHNSON

Through: S/S,
From: L - John R. Stevenson *JRS*
Subject: Preparations for New Law of the Sea
Conference -- ACTION MEMORANDUM

Problem

Despite United States opposition, Committee I of the U.N. General Assembly has overwhelmingly approved a resolution which calls upon the Secretary General to inquire of member States whether a new Law of the Sea Conference should be held. While the resolution originally addressed the seabeds question alone, its language now includes the question of a conference which would review all aspects of the Law of the Sea and all four Geneva Law of the Sea Conventions. The resolution is attached at Tab A. As you know, the United States and the Soviet Union have been circulating a draft set of articles (Tab B) to fix the breadth of the territorial sea, establish freedom of transit through and over international straits, and provide limited preferential fishing rights for coastal States on the high seas. While it has been our position that we would not support a conference on these items unless there were reasonable chances of success, the GA resolution raises serious doubts as to whether we could any longer prevent a new Law of the Sea Conference, and increases the pressure to expand the agenda of the Conference beyond the subjects of the U.S.-Soviet draft articles. It is our view that such an expanded agenda would seriously reduce the possibility of agreement on any subject, could result in revisions of the existing law of the sea regarding resources and military uses which would be detrimental to our interests, and would at best increase the "Price" which would be demanded from the maritime powers in order to maintain a relatively narrow territorial sea.

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DISCUSSION

It appears that the best alternative we have is to move quickly towards a conference with an agenda limited to the breadth of the territorial sea, straits, and fisheries, along the lines of the U.S.-Soviet draft articles. This would involve an early high level announcement of our intention to recommend that a law of the sea conference be convened in early 1971 to deal with these issues. We would presumably seek a resolution calling such a conference at the start of the 25th General Assembly next fall.

We, as well as the Soviets, have circulated the draft articles to a substantial number of States, and have requested comments. A team of experts has just completed consultations with France and eight African Governments on the articles. The results were mixed, although there appears to be a wide measure of support for a 12-mile territorial sea, some support for freedom of transit and overflight of straits (although this is tempered by concern over the Middle East problem), and a considerable number of complaints about the strict criteria which the coastal State must satisfy to obtain preferential fishing rights on the high seas beyond 12 miles. It is by no means clear that the current package could muster a necessary two-thirds majority at a new law of the sea conference. Furthermore, in view of our failure in the UNGA to prevent passage of the resolution regarding a new law of the sea conference with a broad agenda, it will be difficult to muster the necessary support for convening a conference with a limited agenda.

We must also recognize that our posture in the U.N. Seabeds Committee will affect our ability to obtain a conference agenda limited to the subjects of the U.S.-Soviet draft articles. To the extent that other countries suspect this limited agenda conference is a power play to avoid settlement of the seabeds issue and set the stage for a big power grab of the seabeds, our objectives will be prejudiced. Consequently, we should be prepared to state detailed substantive positions on the boundary and regime at the March Seabeds Committee meeting in order to demonstrate that the U.S. is willing to move ahead as quickly as possible on seabeds issues as well, and has made the assessment in good faith that separate treatment of territorial sea and seabeds issues is desirable for maximum progress on both issues.

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Under the circumstances it appears that nothing less than a well organized and vigorous United States effort will suffice if we are to have a reasonable chance of success. Such an effort will require the organization of specialized personnel within the Department and among the agencies concerned. In addition, we have noted that the governments we were consulting directly in Africa were generally taking a sympathetic position regarding a limited agenda conference while their permanent representatives at the U.N. were following India's lead toward exactly the opposite result. It appears that continuing personal contact with interested officials within a large number of governments who can be expected to attend a conference of plenipotentiaries is essential to our objectives. We have already proposed a meeting with Soviet experts to discuss the new situation brought about by the passage of the U.N. resolution. A few months ago we informed various Asian governments that a U.S. team of experts would be visiting to discuss the draft law of the sea article after the first of the year. There will undoubtedly be an increased need for consultations with our NATO allies in Brussels or selected capitals. All of these factors point to a substantial increase in activity in the near future.

I propose to handle the increased tempo of events leading to a conference in 1971 in the following manner:

1. I would establish within L an office specifically concerned with coordinating the conference effort, with 2 attorneys assigned initially. (If possible I would like to arrange for a Foreign Service Officer with legal training to fill one of these positions on a temporary basis without charge against L's personnel ceiling.) I would request S/FW, IO, and the regional bureaus each to designate one person to work with this office. Such individuals could be expected to continue their regular duties for the present, but devote increasing time and attention to the law of the sea conference as it approaches.

2. I would propose to establish an interagency group at the working level to coordinate our effort and enable us to respond quickly and in a unified manner to the increasing number of questions and problems we can expect. The Departments of Defense and Interior would be asked to contribute to this interagency working group, whose work would be guided by the special office I propose to establish within L.

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Authority

By NARA Date

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3. It is my intention to submit a proposal for funding these operations. The expenses involved (apart from the salary of the FSO temporarily assigned to L, if this proves practicable) will basically relate to travel. I cannot emphasize too strongly my belief that unless we are prepared to send properly qualified personnel to various places, our chances for success will be diminished. It is of course my hope that we can utilize our Embassy personnel as much as possible, but I must point out that the subject is an extremely complex one which requires specialized expertise. In this regard, the arguments for a limited agenda conference, and for excluding the seabeds item, are quite sophisticated.

4. Our experience during the African canvass revealed a wide variety of interest in the subject and appreciation of its importance within our Embassies. I would hope in the near future that the Secretary could inform our Ambassadors of the important U.S. interests which are involved.

RECOMMENDATIONS:

I propose that Ambassador McKernan, Mr. Greene and I meet with you to discuss the following recommendations:

1. That you approve the establishment within L of an office to coordinate the Department's law of the sea activities, including the personnel designated by S/FW, IO and the regional bureaus.

Approve

DEC 24 1969

Disapprove

2. That you approve the establishment of an interagency working group to coordinate U.S. Government law of the sea effort.

Approve

DEC 24 1969

Disapprove

Copy to: SCI-Mr. Pollack

Concurrences:

S/FW - Ambassador McKernan
IO - Mr. Greene

Attachments:

As stated.

L/SPA:BOxman:mjb

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